

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

IN THE MATTER OF:

PENELOVE L. DAVIS,

Chapter 13
Case No. 15-41266
JUDGE MARCI B. MCIVOR

Debtor.

/

**DEBTOR'S CONTEMPT MOTION AGAINST
CARMEN AUTO SALES, LLC, FOR WILLFULLY
VIOLATING THE AUTOMATIC STAY**

The Debtor Penelove L. Davis, by her attorney Babut Law Office, P.L.L.C., asks the court to find creditor Carmen's Auto Sales, LLC [hereinafter Carmen's] in contempt of Court for willfully violating the Automatic Stay. Further, the Debtor asks the Court to order Carmen's to return the Debtor's vehicle wrongfully taken, pay actual damages, attorney fees, and punitive damages pursuant to §362(k)(1). In support of this Motion, the Debtor pleads the following:

1. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334. This is a core matter under 28 U.S.C. §157(b)(2)(A).
2. The Debtor filed for Chapter 13 bankruptcy protection on January 30, 2015.
3. On Schedule B the Debtor listed a 2004 HHR vehicle as part of her bankruptcy estate that is worth approximately \$3,000. The vehicle is secured by a lien held by Carmen's. The amount owed is approximately \$3,610.
4. Carmen's is listed on Schedule D and the Matrix. The address used is 32017 Michigan Avenue, Wayne, MI 48184, which is the mailing address provided to the State

of Michigan's Department of Licensing and Regulatory Affairs, and on the purchase agreement [Exhibit C].

5. On or about January 30, 2015, William Babut, attorney for the Debtor, spoke with Frank Carmisino, Carmen's Residence Agent, on the telephone to inform Mr. Carmisino of the bankruptcy filing, the Automatic Stay, and the Chapter 13 Plan treatment. This call was a courtesy call because Mr. Babut's brother, Bob Babut, is the accountant for Carmen's [Exhibit D].

6. On April 1, 2015, the Debtor contacted Babut Law Office, and spoke with Thomas Paluchniak, also attorney for the Debtor, and informed him that Carmen's had repossessed her vehicle the day before, on March 31, 2015.

7. On April 1, 2015, Mr. Paluchniak spoke to Mr. Carmisino to try and have the vehicle returned. Mr. Carismino confirmed to Mr. Paluchniak that he was aware of the Bankruptcy filing, but that he would not be returning the vehicle, and stated that, "she will have to take me to Court."

8. On April 1, 2015, Mr. Babut left a message for Mr. Carmisino explaining the Automatic Stay violation, and invited him to call him back to try and resolve the situation. The call was not returned.

9. The Debtor has suffered actual damages from the repossession of the vehicle, including but not limited to: missing a day of work, losing her father's prescription glasses that were in the vehicle [and not being returned to her upon request], and having to pay others to drive her around. Further, she risks losing her job because of the unreliability of finding rides to work, and her disposable income is currently being dedicated to her Chapter 13 plan.

10. Pursuant to 11 USC §362(k)(1), "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

11. Considering the Bankruptcy Notice and personal communications with Mr. Carmisino by the Debtor's Attorneys, Mr. Carmisino's decision to repossess the Debtor's vehicle was done with full knowledge of the Debtor's Bankruptcy filing and willful disregard of the Automatic Stay.

WHEREFORE, the Debtor requests from this Court the following:

- A. Hold Consumer Auto Sales, LLC in contempt of Court for willfully violating the Automatic Stay provisions of the Bankruptcy Code;
- B. Order the Return of the 2004 HHR; and
- C. Award the Debtor actual costs, attorney fees, and punitive damages for Carmen's willful violation of the Automatic Stay.

Dated: April 13, 2015

/s/ Thomas H. Paluchniak
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